

These are the changes to the 2008 Compliance Manual, all changes and additions will be **BOLD**, *Italic*, AND Underlined. If something was taken out of a paragraph then the part, page and copy of the new paragraph is below.

Part 2.2 Responsibilities of Development Owner

L. Notifying IHCDA of any noncompliance issues.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCDA need not be reported to the IRS by the IHCDA. The Owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum LIHTC gross rent is \$500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of \$1,000. On February 1, 2007 the Owner and/or management agent noticed the unit is out of compliance during and internal audit, because the rent charged exceeded the maximum LIHTC Rent Limit. On February 1, 2008, the Owner and/or management agent immediately corrected the noncompliance issue, documented the file as to what the noncompliance issue was, date that it was corrected and what actions were taken to correct the noncompliance issue. On June 21, 2007 the IHCDA notified the Owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered and corrected prior to the Owner and/or management agent's notice of the IHCDA's upcoming compliance review, the IHCDA is not required to report the noncompliance issue to the IRS.

Part 3.2 Minimum Set-Aside Requirements and Income Limits

B. Maximum Income Limits

Developments that were funded by the IHCDA prior to 2003 are both rent restricted, as well as income restricted at the AMI levels selected in their final application submitted to IHCDA, and are required to meet those State set-asides identified and recorded in the Extended Use Agreement. Developments funded on or after 2003 are rent restricted only at the individual AMI levels selected in the final application submitted to IHCDA, and are recorded in the Extended Use Agreement, in addition to the requirement of meeting the Federal minimum low-income set-aside election the Owner has chosen for income restrictions, either the "20/50" or "40/60" set-aside.

If the Household income of a qualifying unit increases above 140% of the income limit and the unit initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent restricted and the next available unit of comparable or smaller size is rented to a qualified low-income Tenant. *Please see Part 3.5 of the IHCDA Compliance Manual for further clarification of the 140% Rule/Next Available Unit Rule.*

Part 3.4 Utility Allowances

Added:

or department

Deleted:

IHCDA does not maintain Utility Allowances.

Part 3.5 Rules Governing the Eligibility of Particular Residential Units

C. 140% Rule/Next Available Unit Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the income limit, due to an increase in income or subsequent to the initial income qualification, there is a decrease in the Area Median Gross Income, the unit may continue to be counted as a low-income unit as long as the following criteria is met: 1) the unit continues to be rent-restricted at the state set-aside, and 2) the next available unit of comparable or smaller size in the same building is rented to a qualified Low-income Household. If the income of the occupants of a qualifying unit increases more than 140% of the income limit, the qualifying unit will no longer qualify as a low-income unit, if any residential rental unit in the building, of comparable or smaller size, is occupied by a new resident whose income exceeds the income limitation. The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the tenant's income and the qualifying income for the location, rather than only on the date the tenant initially occupied the unit. In Developments containing more than one low-income building, the available unit rule applies separately to each building in the Development. Additionally, the property must maintain all State and Federal Set-Aside requirements stated in the development's final application and recorded in the Deed Restriction.

Example 1:

A property contains 10 units of equal size. Units 1-7 are qualified low-income units and units 8 and 9 are market rate units, unit 10 is a currently vacant market rate unit. The applicable fraction of the building is 70%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 60%. In order to remain in compliance, unit 10 must be rented to a qualified household to replace unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into unit 10, thus the current applicable fraction increases to 70%.

Example 2:

A property contains 10 units of equal size. All 10 units are qualified low-income units. The applicable fraction of the building is 100%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 90%. On November 1, a non-qualified household moves into unit 10, due to an error. At the time of the move in, the current applicable fraction was equal to 90%, excluding

all over-income units. The non-qualified household moving into unit 10 caused a Next Available Unit Rule violation and all over-income units (unit 4) cease to be treated as low-income units. The date of non-compliance would be November 1.

Example 3:

A property contains 10 units of equal size. Units 1-7 are qualified low-income units and units 8 and 9 are market rate units, unit 10 is a currently vacant market rate unit. The applicable fraction of the building is 70%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 60%. On November 1, a market rate household moves into unit 10. At the time of the move in, the current applicable fraction was equal to 60%, excluding all over-income units. The market rate unit moving into unit 10 a Next Available Unit Rule violation and all over-income units (unit 4) cease to be treated as low-income units. The date of non-compliance would be November 1.

Deleted:

Additionally, should an RHTC property contain units that are set-aside for households at different income levels (i.e. 60% AMI units, 50% AMI units, 40% AMI units, and 30% AMI units), the Owner must apply the 140% rule for each unit type.

For example:

A property contains units set-side for persons at 40% AMI and 50% AMI. A household of four (4) persons moves into a 40% unit.

40% Income Limit = \$15,000 50% Income Limit = \$16,500

140% Income Limit for 40% units = \$21,000 140% Income Limit for 50% units = 23,100

At re-certification the household's income is \$21,223. Because the household's income has risen 140% above the maximum income limit for their unit type, the next available unit of comparable or smaller size must be rented to a 40% household.

Once a comparable unit is rented to a 40% household, the unit that rose above the 140% income limit may fulfill another set-aside (i.e. the over-income household's rent may be increased to the 50% rent limit).

D. Unit Transfer of Existing Tenants

Developments that contain multiple buildings within one project may allow residents of RHTC units to transfer to other RHTC units outside of the same building without having to re-certify them for the program, similar to unit transfers within the same building. The household's income must be no greater than 140% of the applicable income limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it. NOTE: This provision applies only if the owner has selected Yes under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?"

For developments where the owner has selected No under Part II 8b on the IRS Form 8609 to the question, “Is the building part of a multiple building project?” the household must be treated as a new move in if the household desires to transfer to a different RHTC unit outside of the same building. All application, certification, and verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset verifications to determine continued eligibility. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

Deleted:

Should an existing Household desire to transfer to a different RHTC unit outside of the same building, the Household must be treated as a new move-in. All Application, Certification, and Verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset Verifications to determine continued eligibility.

Part 3.6 Rules Governing the Eligibility of Particular Tenants and Uses

B. Student Status

For purposes of the RHTC program, IRC § 151(c)(4) defines, in part, a “student” as an individual, who during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time student (based on the criteria used by the educational institution the student is attending) at an education organization described in IRC §170(b)(1)(A)(ii).

An education organization as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses.

C. Unborn Children and Child Custody

Additionally, when determining Household size, owners should include children subject to a joint custody agreement, who live in the unit at least 50 percent of the time. However, a child may not be counted in more than one tax credit unit for household size.

E. Model Units

IHCDA recognizes that it may be standard industry practice to utilize a model unit(s), during a project’s rent-up period to show prospective tenants the desirability of the project’s units. The use of a model unit can be a good marketing tool, in respect to the immediate ability to show the unit without disturbing current tenants in occupied units.

Under IRC §42, a model unit is considered a rental unit and therefore the model unit’s cost can be included in the building’s eligible basis and in the denominator of the applicable fraction when determining a building’s eligible basis. There are several different ways a project can utilize a model unit:

- Model is utilized during the rent-up period and is later used as a qualified rental unit and rented to a qualified household. The cost of the unit should be included in the building's eligible basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the applicable fraction when determining a building's eligible basis, however it should not be included in the numerator of the applicable fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in qualified basis; i.e., the "2/3 credit" rule.
- Model is utilized during the rent-up period, as well as the entire compliance period. If a model unit is never rented as a LIHTC unit, then it should not be included in the numerator of the applicable fraction when determining a building's qualified basis. However, the costs of the unit should be included in the building's eligible basis and in the denominator of the applicable fraction when determining a building's eligible basis.
- A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the applicable fraction when determining a building's eligible basis. Unit should be shown as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as "Model Unit." Also, the development must continue to make reasonable attempts to rent out the vacant units used as model units.

Part 4.1 Tenant Qualification & Certification Process

1. Added - (effective date of TIC must be date of move-in or re-certification);

Part 4.3 Tenant Income Verification

A. Effective Term of Verification

Changed:

90 to 120 days

Deleted:

If after 90 days, if the Tenant has not yet moved in, the information may be verbally updated from the source. This verbal Verification is valid for an additional 30 days, but only if documented (See Part 4.2(B)3)).

Added:

if the tenant has not yet moved in,

B. Methods of Verification

1. Written Verification

c) Added: (if forms are returned with any information incomplete, management MUST complete clarification form to document incomplete information);

4. Public Housing Authority Verification

Second Paragraph Added:

⌚ after 50058

Deleted:

“or”

Added:

or the IHCDA approved form in Appendix E

Replaced:

“90” with 120 days

Third Paragraph Added:

⌚ after 50058

Deleted:

“or”

Added:

or IHCDA approved PHA form,

Added:

⌚ after 50058

Deleted:

“or”

Added:

or PHA form

6. Acceptable Forms of Income Verification

Added:

Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award letter provided from the Social Security office to verify Social Security Benefits. However, all Supplemental Security Income is required to be verified and dated within 120 days prior to the certification date.

Part 4.4 Move-In Dates

A. RHTC Developments Involving the Acquisition and Rehabilitation of a Building(s)

First Paragraph Deleted:

within 90 days **prior** to or on the acquisition Placed in Service Date.

Added:

by no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition.

Second Paragraph Added:

date of

Deleted:

Placed in Service Date

Added:

, using the income limits that are in effect at time of move-in

Third Paragraph Added:

For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first credit year must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period using the following requirements:

1. The test must be completed within 120 days prior to the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be verified and added to the current TIC. If income sources have not changed, it will not be necessary to complete new third party verifications.
3. If the household is over-income based on current income limits, the Next Available Unit Rule must be applied.

Fourth Paragraph Deleted:

“may” after requirement

Added:

will then

annually, beginning with the initial certification date.

Deleted:

, even if the rehabilitation Placed in Service date is after the acquisition Placed in Service date.
Therefore, the Owner need not certify tenants at both the acquisition and the rehabilitation Placed in Service date.

B. RHTC Developments Involving Rehabilitation Only

Replaced:

“within 90 days prior to or on the” with **by no later than 120 days after the**

Part 4.5 Annual and Interim Income Re-certification Requirements

Paragraph 2 Replaced:

“90” with **120**

B. Replaced:

“90” with 120 (two places)

Part 4.6 Annual Re-certification Waiver

Deleted:

IHCDA will accept requests for the Re-certification Waiver for 100% RHTC developments. See Appendix A (9) IRS Revenue Procedure 94-64; Waiver of Annual Income Recertification.

Added:

IRS Revenue Procedure 2004-38, replaces IRS Procedure 94-64 becoming effective on July 6, 2004, establishing the procedure on how to seek a waiver of the Annual Income Re-certification requirement allowed by Section 42 of the Code (Appendix A).

The law provides that “on application of the taxpayer, the (Treasury) Secretary may waive any annual re-certification of Tenant income for purposes of Section 42(g), if the entire building is occupied by low-income Tenants.” Although the Code uses the word “building” with reference

to waivers, requests are made for complete Developments. Waivers will not be granted for individual buildings. In addition, although the Code uses the word “re-certification waiver”, the requirement for the Owner to annually receive 3rd party income Verifications for Tenants is the only requirement that actually is waived.

A. General Waiver Information

When an Owner receives a waiver from the IRS, the Owner then will not be required to:

1. Keep records showing income Verifications of any occupant who has previously had his or her Annual Income, verified, documented, and certified;
2. Maintain income Verification documentation; or
3. Certify to the Indiana Housing and Community Development Authority that such documentation has been received.

The waiver only waives the requirement to obtain Verifications of Income and Assets of existing residents. All new applicants/residents must be fully qualified with complete verifications and certifications. This includes existing residents who transfer to a different apartment outside the same building.

Additionally, a Tenant Certification must still be completed showing the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Tenant. Finally, rents must still be tracked on an ongoing basis to ensure that restricted rent levels are maintained and Utility Allowance requirements are followed. IHCD is still required by the IRS to perform compliance monitoring reviews of the development at least once every three years.

At a minimum, the following items must continue to be present in the Tenant’s file when the property obtains the waiver:

1. Initial Application, Tenant Eligibility Questionnaire, Tenant Certification, and Verifications of Income, Assets and other eligibility requirements from the move-in date of the Tenant;
2. Annual Tenant Certifications and Tenant Eligibility Questionnaires with the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Household (after the initial Tenant Certification, Income Verifications are no longer required);
3. Initial and subsequent leases.

Note: The Annual Owner Certification of Compliance, monitoring fees, and supporting documents are still a requirement for a Development with a waiver.

B. Term of Waiver

The waiver will take effect on the date the Service approves the waiver.

The Owner must continue standard re-certification practices until the waiver letter is actually received from the IRS, and a copy is furnished to IHCD.

A waiver remains in effect unless revoked by the IRS. The IRS can revoke a waiver for the following reasons:

- If a building ceases to be 100% RHTC;
- If IHCDA reports compliance problems through the submission of a Form 8823 to the IRS;
- There is a pattern of households comprised entirely of full-time students;
- Owner no longer submits Annual Owner Certification of Compliance to IHCDA;
- Change in ownership of the property (will be revoked automatically for change in ownership);
- Building ceases to be decent, safe and sanitary for tenants;
- The IRS determines that owner has violated Section 42 in a manner that is sufficiently serious enough to warrant revocation.

If revocation occurs, the Owner of the property will have to re-certify all residents, beginning on the effective date of the revocation, as if the waiver had never been granted.

C. Waiver Conditions

To obtain a waiver, the Development must meet the following criteria:

1. No non-compliance issues are outstanding;
2. Each current resident is a qualified low-income resident;
3. All adult Tenants in the Household have signed a sworn statement to document income in accordance with procedures in Revenue Procedure 2004-38 (See Appendix A);
4. The Development is one hundred percent (100%) RHTC eligible;
5. The Development has received an IRS form 8609 and has been through at least one reporting cycle with IHCDA, including tenant file review and Annual Owner Certification of Compliance review;
6. The Development must have no outstanding items of noncompliance with Section 42 Regulations; and
7. The Development and its owner(s) and management agent must be in good standing with IHCDA.

D. Requesting a Waiver

If an Owner decides to request a waiver, a file review of 100% of the Development's units must be performed.

To request the re-certification waiver the development owner must submit the "Application for the Re-certification Waiver", along with the application fee of \$150.00. The fee must be received before an application will be reviewed. The application fee is non-refundable, but will be credited to the developments total fee if waiver review is completed.

After a review of the property has occurred IHCDA will provide the Owner a statement that each residential unit in the building is in compliance with Section 42. Once the development owner has received the letter from IHCDA, the owner will need to complete and sign Part I of IRS Form 8877 and submit to IHCDA. IHCDA will review the form, complete the State's portion and return to the development owner. The development owner must then complete Part II of Form 8877 and submit the original to the IRS and a

copy to IHCDA to be kept with the Development's records. No other party may submit a waiver request.

IRS Form 8877 must be sent to:

The Internal Revenue Service
PO Box 245
Philadelphia, PA 19255

When the IRS approves the waiver, the owner is responsible for sending a copy of the approval notice to IHCDA. The development will continue to be treated as a non-re-certification waiver property until the IRS approval letter is received by IHCDA.

E. Denial and Appeals Process

Denials

If IHCDA finds an issue of non-compliance with the waiver application or any tenant file during the file review process the owner is responsible for providing a timely response to IHCDA's correction requests with the following submission guidelines:

- First request – The owner has seven business days to provide the requested documentation. If the owner fails to respond or the documentation fails to correct the issue(s) of non-compliance, a second request will be issued.
- Second request – The owner has five business days to provide requested documentation. If owner fails to respond or the documentation fails to correct the issue(s) a final request will be issued.
- Final request – The owner has three business days to provide the requested documentation.
- If there is not a reply received from the owner, the development will be denied the waiver for failure to respond.

The owner may request an extension in writing for the submission of the requested documentation. No extension request from the management company will be accepted. If the owner received a request from IHCDA for information and requires an extension to submit documentation, a written request must be submitted to the Multi-Family Manager at:

30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

The request must be received prior to the last day the submission is due. Failure to follow guidelines may result in the denial of the Re-certification waiver application.

IHCDA reserves the right to deny an application even if non-compliance issues are resolved, or for just cause. If IHCDA finds patterns of Management/Owner practices that are inconsistent with IRS and/or IHCDA standards, the Waiver may be denied. Violations may include, but are not limited to:

- Backdated forms (tenant Income Certifications, Sworn Income and Asset Statements, etc.);

- Correction fluid used on forms;
- Signing required forms prior to dates allowable by IHCD;
- Lack of response on the part of the management/owner to issues identified during the tenant file review process of the development.

Appeals

If the Re-certification Waiver is denied, an appeal must be submitted to IHCD within ten (10) business days from the date of denial. An appeal must be in writing on the Company letterhead and signed by the Owner. The written appeal must describe in detail why the appeal should be granted and provide documentation to that effect. Appeals need to be submitted to the Multi-Family Manager and the above listed address. IHCD will provide the owner with a written notification of the appeal decision. All decisions to deny an appeal are final. Any Development denied a Re-certification waiver may submit an application the following calendar year and complete the process again.

F. Waiver Fees

The fees for the Re-certification waiver are on a per unit basis. The fee will be \$30.00 per unit with a minimum of \$500.00 for initial review. For each unit that requires a second review (for corrections) an additional charge of \$10.00 per unit reviewed will be imposed.

All initial review fees must be paid in full by no later than ten (10) business days prior to the site review. IHCD reserves the right to cancel reviews if applicable fees are not received on a timely basis. Checks should be made payable to Indiana Housing and Community Development Authority and sent to 30 South Meridian Street, Suite 1000 Indianapolis, IN 46204.

Part 4.7 Lease and Rent Requirements

A. Lease Requirements

Added:

(if unit /bedroom size and set aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);

B. Rents

Added:

Any violation of overcharging rents is considered non-compliance and an IRS Form 8823 will be issued.

Part 5.6 IHCD Tenant/Unit File Review and On-Site Development Inspections

- A. When performing an on-site (at the Development or management office) review, IHCD will:**

1. As a courtesy the IHCD A will notify the Owner and/or management agent two weeks in advance of the intended site visit, however, the IHCD A reserves the right to inspect any RHTC Unit at any time at its discretion without prior notification.

Deleted:

Notify, as a courtesy. However

B. When performing an in-house (at IHCD A offices) review, IHCD A will:

2. We respectfully request that copies of the selected files and documentation either be shipped to the IHCD A or hand delivered by the Owner or a Representative of the Owner.
3. Provide a current rent roll.
4. All files and confidential information will be shredded by the IHCD A.

Deleted:

2. Request, deliver the selected files and documentation to the IHCD A

Part 5.10 Amendments to Compliance Monitoring Procedures

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCD A need not be reported to the IRS by the IHCD A. The Owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum LIHTC gross rent is \$500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of \$1,000. On February 1, 2007 the Owner and/or management agent noticed the unit is out of compliance during and internal audit, because the rent charged exceeded the maximum LIHTC Rent Limit. On February 1, 2008, the Owner and/or management agent immediately corrected the noncompliance issue, documented the file as to what the noncompliance issue was, date that it was corrected and what actions were taken to correct the noncompliance issue. On June 21, 2007 the IHCD A notified the Owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered and corrected prior to the Owner and/or management agent's notice of the IHCD A upcoming compliance review, the IHCD A is not required to report the noncompliance issue to the IRS.

Section 7 - Glossary

140% Rule - Deleted word: *applicable*

Added Definition:

Adjusted Basis: The cost basis of a building adjusted for capital improvements minus depreciation allowable.

Effective Term of Verification –

Added: After this time, if the tenant has not yet moved in, a new written third party verification must be obtained.

Deleted: A Verification is valid for ninety (90) days, and may be updated orally for an additional thirty (30) days.

Added Words and Definitions:

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered common area, the manager does not have to be income qualified. If the unit is considered a rental unit, the resident manager would need to be income qualified.

Model Unit: A rental unit set aside to show prospective tenants the desirability of the project's units without disturbing current tenants in occupied units. The model unit's cost can be included in the building's eligible basis and in the denominator of the applicable fraction when determining a building's eligible basis.

Student –

Added: during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time Student (as defined by the organization) at an educational organization with regular facilities and Students. An education organization is one that normally maintains a regular faculty and curriculum, and normally has enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses or correspondence schools.

Deleted: (institution)...institution...other than correspondence school.